



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

JUL 31 2000

MEMORANDUM FOR CHERYL HARSKOWITCH
DIRECTOR, TAXPAYER ACCOUNT OPERATIONS
C:TA:TAO

FROM:

Carol A. Campbell *CAC*
Technical Advisor to the Counsel to the National Taxpayer
Advocate
CC:NTA

SUBJECT: [REDACTED]

The following comments are being provided in response to your memorandum dated March 27, 2000, inquiring as to whether arguments raised on behalf of the above named taxpayer, by [REDACTED] are valid. We agree with your determination that the response in this case should be made directly to the taxpayer and not to [REDACTED] as she is apparently an unenrolled return preparer.

Initially, we would like to point out that the tax periods referred to in the packet submitted by [REDACTED] and supplied by your office and the tax periods identified in the Appeals response disallowing the taxpayer's claims are not identical. Additionally, the claim made for the [REDACTED] tax year in the packet provided by [REDACTED] relates to actions that predate the [REDACTED] tax year. For example, [REDACTED] states that the Service received the taxpayer's return on [REDACTED] and all the other dates included in her summary are either [REDACTED] or [REDACTED]. There is no reference to [REDACTED] or later, which would have been the period that transactions for the [REDACTED] tax year should have been recorded. Discrepancies like this one and many others in the information provided by [REDACTED] make the arguments being raised difficult to follow, at best. However, without addressing the merits of any of the arguments/determinations made by [REDACTED] the remainder of this memorandum assumes that [REDACTED] is correct in her assertion that the Service incorrectly computed the amount of the refunds or the overpayment interest due on refunds to the taxpayer for the applicable years.

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In essence, [REDACTED] is asserting that the taxpayer is entitled to additional interest on refund amounts for the [REDACTED] tax years based on mathematical or computational errors made by the Service in determining refund amounts. To the extent that [REDACTED] is asserting that the Service incorrectly computed the amount of the taxpayer's liability and thus, the Service erred in determining the amount of the refund to which the taxpayer is entitled, Appeals was correct in applying the provisions of I.R.C. § 6511. Section 6511 requires that a taxpayer's refund claim be filed within three years of the time the tax return is filed or two years from the time the tax is paid. As all the returns at issue were filed and all taxes paid prior to [REDACTED] (three years prior to the earliest date that a claim for refund was filed on the taxpayer's behalf), the taxpayer cannot assert a valid claim for refund.

To the extent, however, that [REDACTED] is asserting only that the Service made math errors resulting in the underpayment of the amount of statutory overpayment interest entitled to the taxpayer, [REDACTED] is correct in asserting that section 6511 does not apply. On these facts, even if the Service erred in computing the amount of overpayment interest due to the taxpayer, the taxpayer is still not entitled to relief from the Service. A taxpayer's right to overpayment interest is governed by I.R.C. § 6611. Section 6611(a) generally provides that interest is to be allowed and paid on any overpayment of an internal revenue tax.¹ Claims for statutory interest on an overpayment, however, must be filed within six years of the time the refund is allowed, as section 6611 claims are governed by the six year statute of limitations for bringing suit under 28 U.S.C. §§ 2401 and 2501. See also Rev. Rul. 56-506, 1956-2 C.B. 959; General Instrument Corporation v. United States, 98-1 U.S.T.C. ¶ 50,234 (1995). The Service can make payments only within the six year statute.

The record supplied by your office does not indicate that the taxpayer filed a valid and timely claim for the payment of overpayment interest or filed a suit for the payment of additional overpayment interest within six years of an allowed refund for any of the periods at issue. Relying solely on the statements provided by [REDACTED] and assuming that the allegations of computational error are correct, because all the refunds that were paid to this taxpayer were allowed more than six years ago, there is no basis for the taxpayer's recovery.

¹ In order to be entitled to overpayment interest it has to be established that the taxpayer's refunds were not paid within 45 days of the filing of his returns or within 45 days of the date the taxpayer's return became processible. See I.R.C. §§ 6611(e) and (g). It is not clear from the information supplied by [REDACTED] that the refunds were paid more than 45 days from the filing of a processible refund return.

Without any consideration of the merits of any of the claims asserted by [REDACTED] [REDACTED], because the statute of limitations for both a suit for refund and a suit for overpayment interest for all the periods at issue has expired, the Service has no legal authority to pay the requested claims.

We apologize for the delay in getting this response to you. If you have questions or need additional information, please advise.